

REMARKS

In the non-final Office Action dated March 04, 2010, it is noted that claims 1-29 are currently pending; that claim 7 stands rejected under 35 U.S.C. §112; that claim 29 stands rejected under 35 U.S.C. §101; that claims 1-5, 7, 14-19 and 28-29 stand rejected under 35 U.S.C. §102; that claims 6 and 20-21 stand rejected under 35 U.S.C. §103; and that claims 8-13 and 22-27 include allowable subject matter. By this amendment, various claims have been amended. The amendments to the claims are proper, justified and supported by the specification and claims, as originally filed. No new matter has been added.

Cited Art

The references cited and applied against the claims are listed as follows: U.S. Patent Application Publication No. US 2004/0148159 to Crockett, et al. (hereinafter "Crockett").

Rejection of Claim 7 under 35 U.S.C. §112

Claim 7 stands rejection under 35 U.S.C. §112, second paragraph as failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 7 has been amended to correct the informalities noted in the Office action. Withdrawal of the rejection is respectfully rejected.

Rejection of Claim 29 under 35 U.S.C. §101

Claims 29 stands rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. The Office action asserts that in the state of the art, transitory signals are commonplace as a medium for transmitting computer instruction and thus, in the absence of any evidence to the contrary and give the broadest reasonable interpretation, the scope of a "computer readable medium" covers a signal *per se*. Claim 29 has been amended to recite a non-transitory computer readable medium. In view of the amendment to claim 29, withdrawal of the rejection is respectfully requested. Applicants further submit that "non-transitory computer-

“readable” media comprises all computer-readable media, with the sole exception being a transitory, propagating signal.

Rejection of 1-5, 7, 14-19 and 28-29 under 35 U.S.C. §102

Claims 1-5, 7, 14-19 and 28-29 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Crockett. The rejection is respectfully traversed.

Independent claims 1 and 15 include similar features. In view of this similarity and for the sake of brevity for this response, the following remarks will be addressed to claim 1, but should be understood to pertain as well to claim 15. Crockett does not teach, show, or suggest the method defined in claim 1.

Claim 1 recites, in part, the features:

“deriving a first fingerprint on the basis of a segment of the first signal, where the segment of the first signal is unambiguously related with a first synchronisation time point (Tn; Tn+1), deriving a second fingerprint on the basis of a segment of the second signal, where the segment of the second signal is unambiguously related with a second synchronisation time point (Tn; Tn+1;Tm)”

Crockett appears to teach a method for time aligning of audio signals using characterizations based on auditory events. According to Crockett, one signal has been derived from the other or both have been derived from another signal. See *Crockett Abstract*. In an embodiment of Crockett, an auditory scene analysis (ASA) is applied on the signal in order to produce a fingerprint or signature related to the signal. See *Crockett at paragraph [014]*. The operation of the ASA is further described in paragraph [036] of Crockett where it is stated that the ASA process includes a Perform Spectral Analysis sub-step, which takes the audio signal, divides it into blocks, and calculates a spectral profile or spectral content for each of the blocks. Thus, ASA produces a fingerprint based on the entire signal, and not on the basis of a segment of the signal, as claimed by Applicants. In addition, nowhere in Crockett it is shown or

suggested that the segment of the signal to which a fingerprint is generated is unambiguously related with a synchronization time point.

Thus, it is understood that Crockett fails to teach all the features of claims 1 and 15. In light of these remarks, Applicants respectfully submit that Crockett does not anticipate or make obvious independent claims 1 and 15. Therefore, claims 1 and 15, and the claims dependent thereon are allowable under 35 U.S.C. §102. Withdrawal of this rejection is respectfully requested.

Rejection of Claims 6 and 20-21 under 35 U.S.C. §103

Claims 6 and 20-21 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over Crockett in view of an Official notice. *See Page 7 of the present Office action.* The rejection is respectfully traversed.

Claims 6 and 20-21 respectively depend from claims 1 and 15, and include all the limitations thereof as discussed above. As argue above, independent claims 1 and 15 are patentably distinguished from Crockett. Assuming for the sake of argument that the Official Notice taken by the Examiner is proper, an assumption with which Applicants neither agree with nor acquiesce to, the teachings subject to the Official Notice fail to cure the defects present in the teachings of Crockett as applied to claims 1 and 15.

The present Office Action moves outside the Crockett reference for support of the rejection and apparently resorts to Official Notice in order to find support for rejecting the limitations in claims 6 and 20-21. The apparent Official Notice in the present Office Action is unsupported by any specific documentary evidence. According to M.P.E.P. §2144.03(A), “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” It is respectfully submitted that the apparent Official Notice herein is made in error because the facts relied upon are not well known and are not capable of instant and unquestionable demonstration as being well known. Applicants hereby traverse the apparent reliance on Official Notice

and requests that the Official Notice in this matter be supported by documentary evidence. Without the proffer of such documentary evidence, it is submitted that the present Office Action fails to state a *prima facie* case of obviousness under 35 U.S.C. §103.

In light of these remarks, it is believed that claims 6 and 20-21 would not have been obvious to a person of ordinary skill in the art upon a reading of Crockett. Thus, it is submitted that claims 15 and 20-21 are allowable under 35 U.S.C. §103.

Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Reconsideration and allowance of all the claims are respectfully solicited.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

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